IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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:: JUDGMENT ::

(1) Depot Manager, RSRTC Vs. Shorabh Trivedi & Ors.

S.B. CIVIL MISC. APPEAL NO.828/2000.

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(2) Depot Manager, RSRTC Vs. Roop Lal & Ors.

S.B. CIVIL MISC. APPEAL NO.924/1999.

...

(3) Depot Manager, RSRTC Vs. Smt. Tripti Devi & Ors.

S.B. CIVIL MISC. APPEAL NO.2/2002

...

(4) Depot Manager, RSRTC Vs. Hurma & Ors.

S.B. CIVIL MISC. APPEAL NO.855/2000

...

(5) Smt.Manohar Devi & ors. Vs. Shivlal & Ors.

S.B. CIVIL MISC. APPEAL NO.261/1999

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Against the common award 26.02.1999 made by the Motor Accidents Claims Tribunal, Banswara in Claim Case Nos.150/1994, 147/1994, 139/1994, 182/1994 and 157/1994.

Date of Judgment ::: 20th September 2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.B.S.Bhati for the appellant in CMA No.828/2000, CMA No.924/1999, CMA No.2/2002 & CMA No.855/2000.
Mr.P.R.Mehta for the appellants in CMA No.261/1999

Mr.N.K.Rastogi)
Mr.Mahendra Trivedi) for the respondents
Mr.Mahesh Thanvi with)
Mr.Amra Ram Rajpurohit)
Mr.R.S.Shekhawat)

...

BY THE COURT:

These five appeals preferred against the common award dated 26.02.1999 made by the Motor Accidents Claims Tribunal, Banswara relate to the same accident and involve a single common question regarding responsibility towards accident; hence were heard together and are taken up for disposal by this common judgment.

The accident in question occurred on 21.4.1994 at about 08.30 a.m. on Udaipur-Banswara Road on a curve near Lasada village pond in head-on collision of two buses: one bearing registration No. RJ 14 P 2438 belonging to the Rajasthan State Road Transport Corporation (RSRTC) driven by late Nandkishore (hereinafter referred to as the 'roadways bus') running from Udaipur to Banswara; and the other one coming from opposite direction bearing registration No. RJ 12 P 0207 belonging to Shivlal, driven by Jeevan and insured with United India Insurance Co. Ltd. (hereinafter referred to as the 'private bus'). As a result of the accident some of the occupants of the buses sustained injuries and the driver of the roadways bus succumbed to the injuries.

Separate Claim Applications were submitted seeking compensation for the loss caused by the accident. While Hurma (occupant of private bus),Smt. Trupti, Roop Lal and Master Saurabh Trivedi (occupants of roadways bus) claimed compensation for the loss suffered by them due to the injuries sustained in the accident against the persons related with both the buses; on the other hand Smt. Manohari Devi and others, wife and children of the deceased driver of the roadways bus Nandkishore, claimed compensation against the driver, owner and insurer of the private bus. The injured claimants alleged the responsibility of both the drivers towards accident whereas the dependents of the deceased roadways bus driver alleged that the accident occurred due to the fault of the private bus driver. The responsibility towards accident being the only question involved in these appeals, the pleadings taken by the claimants in that regard could be usefully noticed.

The claimant Hurma (Claim Case No. 182/1994) attributed the accident to rash driving by both the bus drivers thus:

> "उक्त दुर्घटना दोनों बसों के ड्राईवरों द्वारा लापरवाही, गफलत व तेज रफ्तार से अपनी अपनी बसे चलाने के कारण हुई है।"

The claimant Smt. Trupti (Claim Case No. 139/1994) alleged in her claim application that the collision occurred due to rash and negligent driving by the driver of the private bus and that the roadways driver was also negligent thus:

> "प्रार्थीया चोटग्रस्त उदयपुर से बांसवाड़ा अपने पिता के घर आने के लिये उदयपुर रोडवेज बस स्टेशन से रोडवेज की बस आर.जे.-141 पी.2438 में वैधानिक रूप से अपने बच्चे सौरभ को लेकर यात्रा कर रही थी कि, लोहारिया थाना अन्तर्गत लसाड़ा तालाब के निकट सामने से तेज रफतार, गफलत व लापरवाही से चलाता हुवा अप्रार्थी सं. 2 वाहन चालक श्री जीवणा पिता कचरू महालक्ष्मी बस को सामने रोडवेज की बस को टक्कर मारी व रोडवेज बस चालक की भी लापरवाही थी जिसके फलस्वरूप प्रार्थीया गंभीर रूप से घायल हो गयी ओर घटना स्थल पर ही बेहोश हो गयी। उक्त दुर्घटना में रोडवेज का बस चालक की घटनास्थल पर ही मृत्यु हो गयी है।"

Similar are the averments in the claim application filed on behalf of Saurabh, the minor son of Smt. Trupti, (Claim case No.150/1994) by his father thus:

> "चोटग्रस्त बालक सौरभ (अवयस्क) अपनी मां श्रीमति तृप्ति त्रिवेदी के साथ अपने घर उदयपुर से अपनी ननिहाल बांसवाडा हेतु रोडवेज की बस आर.जे.-14/पी2438 में वैधानिक रूप से यात्रा कर रहा था कि लोहारिया थाना अंतर्गत लसाडा तालाब के निकट सामने से महालक्ष्मी बस विडयो कोच नं.आर.जे.-12/पी.0207 को अप्रार्थी सं 3 जीवणा पिता कचरू (ड्राईवर)लापरवाही और तेज रफतार से वाहन को चलाते हुए रोडवेज की बस को सामने से जोरदार टक्कर मारी जिसके फलस्परूप अवयस्क बालक सौरभ और उसकी मां तृप्ति गंभीर रूप से चोटग्रस्त हो गये व रोडवेज बस ड्राईवर घटनास्थल पर ही मर गया। रोडवेज चालक की भी लापरवाही एवं गलती थी।"

The claimant Roop Lal (Claim Case No. 147/1994) again alleged in his claim application that the collision

occurred due to rash and negligent driving by the driver of the private bus and that the roadways driver was also negligent thus:

> "चोटग्रस्त प्रार्थी उदयपुर से बांसवाडा के लिए प्रस्थान करने हेतू राज. रोडवेज बस आर.जे. 14/पी 2438 में वैधानिक रूप से टिकट लेकर यात्रा कर रहा था कि लोहारिया थाना अंतर्गत लसाडा तालाब के निकट उक्त बस "महालक्ष्मी बस वीडियो कोच" नं. आर.जे.12/पी 0207 को अप्रार्थी सं. 3 जीवणा पिता कचरू ड्राईवर द्वारा लापरवाही और तेज रफतार से चलाते हुए रोडवेज बस को टक्कर मार दी। जिसके फलस्वरूप यह दुर्घटना घटी व प्रार्थी चोटग्रस्त (गंभीर) रूप से हुआ। टक्कर में रोडवेज बस चालक की लापरवाही एवं गलती थी।"

The claimants Smt. Manohari Devi and others (Claim Case No. 157/1994) alleged that the deceased Nandkishore was driving the roadways bus at a slow speed on its side but the private bus driver brought his vehicle at a high speed negligently and forcefully hit the roadways bus; and the roadways bus driver died after the accident. According to these claimants,-

> "दिनांक -21.4.94 को मृतक श्री नन्दकिशोर अपने वाहन स्वामी राजस्थान राज्य पथ परिवहन निगम द्वारा नियोजित हो कर रोडवेज की बस नं0 आर 0 जे014/पी0-2438 को उदयपुर से बांसवाडा की तरफ धिमी गति से अपनी साइड से चला का ला रहा था कि लसाडा के पास सामने प्राइवेट बस नं0-आर 0 जे0-12/पी0-0207 के चालक अप्रार्थी नं0-2 श्री जीवनलाल द्वारा उक्त वाहन को तेजगति,लापरवाहीपूर्वक चलाकर अपनी साइड पर चल रही रोडवेज बस को तेज टक्कर मारी दी जिससे रोडवेज बस के चालक की दुर्घटना के बाद मृत्यु हो गयी।"

The non-applicant insurer of the private bus contested all the claim applications with the submissions, inter alia, that the accident occurred due to the sole negligence on the part of the driver of the roadways bus; whereas RSRTC contested the claim applications of the injured claimants with the submissions that the accident occurred due to the sole negligence of the driver of the private bus.

The Tribunal framed the following issues for determination of the questions involved in these five claim cases:-

> "(1) आया दिनांक 21/4/94 को जीवन अप्रार्थी चालक के द्वारा वाहन नंबर बस आर.जे.12/पी 0207 व नन्दकिशोर चालक द्वारा रोड़वेज बस RJ 14/P 2438 को गफलत व लापरवाही से चलाने के कारण हूरमा, तृप्ति, रूपलाल, सौरभ,नन्दकिशोर दुर्घटनाग्रस्त हुए जिससे उनको साधारण व गंभीर चोटें आई व नन्दकिशोर की मृत्यु हो गई ?
>
> (2)आया प्रार्थीगण क्लेम में बताई गई राशि या अन्य कोई राशि विपक्षीगण से पाने के अधिकारी हैं?यदि हां तो कितनी व किस किस से ?
>
> (3)अप्रार्थीगण जवाब में वर्णित तथ्यों के अनुसार उक्त क्लेम की राशि अदायगी हेतु उत्तरदायी नहीं हैं ?
>
> (4) अनुतोष ?"

In consolidated trial, on the part of the claimants were examined the claimant Hurma as AW-1, the claimant Smt. Trupti Devi as AW-2, father of the claimant Saurabh, Hemant Kumar as AW-3, the claimant Roop Lal as AW-4, the claimant Smt. Manohari Devi as AW-5 and conductor of the roadways bus Meghraj as AW-6. The claimants also produced relevant documentary evidence including police investigation papers. No evidence was produced on behalf of the non-applicants.

The learned Judge of the Tribunal referred to the oral and documentary evidence adduced by the claimants and found in issue No.1 that the accident occurred due to rash and negligent driving of both the bus drivers that caused injuries to the respective claimants and resulted in death of the roadways bus driver. In issue No. 3 the contention on the part of the insurer of the private bus about the responsibility of the roadways bus driver was rejected and it was held that both the driver were equally responsible.

In issue No. 2, the learned Judge considered the quantification of compensation in relation to each individual case and found the claimant Hurma entitled for compensation in the sum of Rs. 16,000/-; the claimant Smt. Trupti Devi in the sum of Rs. 70,000/-; the claimant Roop Lal in the sum of Rs. 38,000/-; and the claimant Saurabh in the sum of Rs. 38,000/-. In relation to the case of the dependants of the deceased

roadways bus driver, the learned Judge assessed the loss at Rs. 3,73,200/- but observed that both the driver were found at fault to the extent of 50% and the claimants have impleaded only the owner, driver and insurer of the private bus as parties, therefore, they were entitled for compensation only in the sum of Rs. 1,86,600/-.

While making the award in favour of the respective claimants for the sum so assessed with interest @ 12% per annum from the date of filing of the respective claim applications, the Tribunal directed the two set of tortfeasors to bear 50% of the award amount each in relation to the cases of the injured claimants; and the non-applicants (related to the private bus) to bear the entire of the award amount in relation to the case of the dependents of the roadways bus driver.

Aggrieved, the owner of the roadways bus and the dependents of the driver of the roadways bus have preferred these appeals and have assailed the finding on responsibility towards the accident. It has been vehemently contended by learned counsel Mr. B. S. Bhati and Mr. P.R. Mehta appearing for the respective appellants that the learned Judge of the Tribunal has been seriously in error in holding the driver of the roadways bus equally responsible towards the accident and that the evidence on record clearly establish that the driver of the private bus alone was responsible for the accident and the

liability for compensation ought to have fastened only upon the insurer of the said vehicle. Learned counsel appearing for the contesting respondents, owner and insurer of the private bus, have duly supported the impugned award and submitted that the finding on negligence of both the driver is based on proper appreciation of evidence and calls for no interference in these appeals.

Having heard learned counsel for the parties and having scanned through the records, this court is clearly of opinion that these appeals remain bereft of substance and deserve to be dismissed.

Learned counsel for the appellants have stressed upon the statements of the witnesses AW-1, AW-2, AW-4 and AW-6 to contend that it has been established that the driver of the private bus was responsible for the accident. The submissions are not well founded.

AW-1, Hurma, the occupant of the private bus, has deposed in his examination-in-chief to the effect that on Lasada bridge both the buses collided; has stated in answer to the cross-examination by the insurer that both the vehicles were maintaining high speed; and has denied the suggestion in cross-examination by RSRTC that there was no fault on the part of the roadways bus driver. AW-2, Smt. Trupti Trivedi, occupant of the roadways bus has stated in her chief that

roadways bus was proceeding properly and at slow speed and that the bus of Mahalaxmi Travels (private bus) came speeding from the opposite direction and hit the roadways bus head-on whereby driver of the roadways bus was thrown behind upon her and her leg got fractured on being entangled in iron mesh. She has pointed out in her cross-examination by the insurer that she was sitting on the seat behind the driver separated by iron mesh that cracked and bended entangling her leg in. She has denied the suggestion that the cause of collision was extra high speed of the roadways bus. AW-4 Roop Lal, another occupant of the roadways bus has deposed that both (the drivers) brought the vehicles at high speed and collided; and in cross-examination by RSRTC has stated that roadways bus was slower than the private bus. AW-6, Meghraj, the conductor of the roadways bus has deposed that private bus driver brought the vehicle at a high speed and hit the roadways bus and has referred to his police statements Ex. 115. In his cross-examination, this witness has denied the suggestion that he was asleep at the time of accident; and has also denied the suggestion that Nandkishore caused the collision by driving his bus negligently. He has admitted that the bridge was wide enough for simultaneous passage of two vehicles. He has also stated that there was a breaker (on the road) but that was near their vehicle and not near the on-

coming vehicle. Relevant part of the testimony of these witnesses could be juxtaposed as follows:

AW-1 Hurma	AW-2 Trupti Devi	AW-3 Roop Lal	AW-4 Meghraj
लसाडा पुल पर सामने से रोडवेज की बस आई और दोनों बसे आपस में भीड गई । xxxx दोनों बसें आपस में टकरा गई और दोनों तेज रफ्तार से आ रही थी। xxxx यह गलत है कि रोडवेज के बस चालक की कोई गलती नहीं थी।	रोडवेज की बस सही और धीमी चल रही थी। सामने से महालक्ष्मी ट्रेवेलस की बस तेज रुफ्तार से आई और रोडवेज की बस से टकरा गई। xxxx यह गलत है कि रोडवेज की बस बहुत तेज गती से आ रही हो और इस कारण से टक्कर हुई हो।	दोनों गाडियां तेज चलाते हुए लाये सामने से आर.जे. 12 पी 207 आ रही थी। दोनों आपस में टकरा गई। xxxx रोडवेज की बस प्राईवेट बस से धीमी चल रही थी।	प्राईवेट बस चालक ने बस को तेज रफ्तार से चलाई व रोडवेज की बस से टक्कर मार दी। xxxx यह गलत है कि नन्दकिशोर ने बस को लापरवाही से चलाकर टक्कर मारी हो। यह सही है कि पुलिया चौडी है तथा दो बसे एक साथ निकल सकती है।ब्रेकर था लेकिन वह हमारी गाडी के पास था सामने वाली गाडी के पास नहीं था।

The statements so made by the claimants and by the bus conductor do not establish that the accident occurred for the sole negligence and fault of the private bus driver. Of course AW-2 Trupti Devi and AW-6 Meghraj have attributed the collision to the higher speed of the private bus but such assertion alone is not decisive of the fault and responsibility for the accident. Even if it were assumed that the speed of the private bus was comparatively higher than that of the roadways bus, such fact does not ipso facto lead to the conclusion that accident occurred for the exclusive fault of the

private bus driver. Then, the witnesses AW-1 Hurma and AW-3 Roop Lal have categorically asserted that both the vehicles crashed into collision at high speed.

A close look at the statements of these witnesses would make the things more clear. Hurma, the occupant of private bus has asserted that both the buses were at high speed and has denied the suggestion that there was no mistake on the part of roadways bus driver. Two occupants of the roadways bus Smt. Trupti and Megraj have asserted that private bus was brought at a high speed into collision with the roadways bus. Another occupant of the roadways bus Roop Lal has asserted that both the vehicles were speeding but then has stated in his cross-examination that roadways bus was slower than private bus.

The statements aforesaid are neither contradictory nor irreconcilable. These statements amply demonstrate the operation of the fundamentals of the theory of relativity that all speeds are relative: they only tell how fast something is moving relative to something else. The occupant of a moving vehicle is likely to perceive, feel and estimate the speed of an on-coming vehicle greater than the speed of the vehicle he is occupying; and the on-coming vehicle, particularly in terms of comparative speed perception, shall appear approaching faster. This is why in the present case of head-on collision of

two buses, Hurma, the occupant of private bus, is sure about equal fault on the part of the roadways bus driver; and this is why all the occupants of roadways bus maintain that the private bus was in greater speed. It is the statement of Roop Lal in his cross-examination that roadways bus was slower than private bus that makes it clear that speed estimation of each of the respective occupants has been relative and conditioned by his own point of reference, i.e., the vehicle he was traveling in. From the statements of these witnesses it cannot be concluded that private bus alone was in greater speed. Their assertions about speed of the respective vehicles could only be visualized in relative terms and the only conclusion possible is that both the on-coming vehicles were in brisk speed.

In fact in these cases, the witnesses concerned have laid emphasis only on the speed of the vehicles; and in support of the appeals also it has been strenuously argued that the private bus being higher in speed, fault lies with it. This court is clearly of opinion that for considering responsibility towards head-on collision on a running highway, the speed is only one of the relevant factors and it cannot be assumed that whenever a vehicle is in higher speed, fault for accident ought to remain with its driver only. It is not the speed driving but it is the rash driving that is the culprit.

Noteworthy it is that none of the witnesses have stated that the private bus intruded into the lane of the roadways bus, that is, severed to its right hand side and then hit the roadways bus. The accident in question occurred for head-on collision of the two vehicles in the middle of the road; and in such incident ordinarily it is the omission of caution on the part of the both the drivers that leads to the collision and both remain equally responsible towards the accident unless some specific facts are proved that indicate extra amount of or greater fault with one particular driver. In the present case there is no such fact available on record for which it could be held that the accident occurred exclusively or largely for the fault of the private bus driver.

A perusal of the site inspection memo Ex. 8, prepared by the police on 21.04.1994 at 09.50 a.m., that is, within about an hour of the accident makes it moreover clear that the accident occurred for rash and negligent driving of both the drivers. It has, inter alia, been reported in the site inspection memo that the two vehicles collided right in the middle of the road at the curve and their fronts crashed into each other thus:

> "दोनों बसे रोड के बिचोंबिच मोड में तेज रफ्तार से आमने सामने टकराने से एक्सीडेन्ट हुआ है तथा दोनों बसों के सामने वाले फ्रन्ट एक दूसरे के अन्दर घुस गई हैं।"

The site plan further shows that the road at the site of incident was 17 feet wide providing enough space for two vehicles to conveniently pass by if the vehicles maintained their lane and were driven with reasonable caution. The fact that accident occurred in the middle of the road at the curve shows that both the drivers choose to take their respective vehicles to the center of the road and to speed ahead omitting reasonable caution particularly for the on-coming traffic. If any of the two vehicles was inside its own lane, the entire of the front of the vehicles would not have rammed into each other as noticed immediately after the incident.

It has been argued that the private bus driver was the relevant witness in this case and he having not been produced, an adverse inference ought to be drawn. Suffice is to say in this respect that even if an adverse inference were drawn, it would not lead to any conclusion except that the private bus driver was equally responsible for the accident. Other facts, evidence and circumstances available on record cannot be ignored which show very clearly that the accident occurred for rashness and negligence on the part of both the drivers.

Learned Judge of Tribunal has properly and correctly appreciated and analysed the evidence produced on record

and has rightly come to the conclusion that both the drivers were equally responsible for the mishap. Findings on issues Nos. 1 and 3 as reached by the learned Judge remain valid and correct findings and call for no interference. The submissions made on behalf of the appellants deserve to be and are rejected. No other point has been argued.

Consequently, the appeals fail and are dismissed. However, in the circumstances of the case parties are left to bear their own costs.

(DINESH MAHESHWARI), J.

MK